

1
2 IN THE UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF ALABAMA
4 EASTERN DIVISION

5 CORY R. MAPLES,)
6)
7 Petitioner,)
8) CIVIL ACTION FILE
9 vs.)
10) NO: 5:03-CV-02399-KOB
11 JEFFERSON S. DUNN,)
12 COMMISSIONER OF THE)
13 ALABAMA DEPARTMENT OF)
14 CORRECTIONS,)
15 Respondent.)

16 DEPOSITION OF PHIL D. MITCHELL
17 DECATUR, ALABAMA
18 THURSDAY, SEPTEMBER 5, 2019
19
20
21
22

23 REPORTED BY: TANYA L. VERHOVEN-PAGE,
24 CCR-B-1790

25 FILE NO. 166898

September 5, 2019

9:00 a.m.

Deposition of

PHIL D. MITCHELL, held at The Hampton Inn,
2041 Beltline Road, S.W., Decatur, Alabama
before Tanya L. Verhoven-Page, Certified Court
Reporter and Notary Public of the State of
Alabama.

APPEARANCES OF COUNSEL

On behalf of the Petitioner:

LATHAM & WATKINS
555 11th Street, N.W.
Washington, D.C. 200004

BY: REBEKAH SOULE, ESQ.

BY: ELANA DAWSON, ESQ.

BY: HEATHER ARTINIAN, ESQ.

ALSO PRESENT: Bethany Anderson
Jessica Gabrian

On behalf of the Respondent:

OFFICE OF THE ATTORNEY GENERAL
STATE OF ALABAMA
501 Washington Avenue
Montgomery, Alabama 36130

BY: BETH HUGHES, ESQ.

- - -

I N D E X

WITNESS: PHIL D. MITCHELL

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1 P. MITCHELL

2 DECATUR, ALABAMA; THURSDAY, SEPTEMBER 5, 2019

3 9:00 A.M.

4
5 Thereupon --

6 PHIL D. MITCHELL,
7 called as a witness, having been first duly sworn,
8 was examined and testified as follows:
9

10
11 EXAMINATION

12 BY MS. SOULE: 10:00

13 Q Good morning, Mr. Mitchell. 10:00

14 A Good morning. 10:00

15 Q So I know that you are well familiar with 10:00
16 how depositions go, but before we sort of jump into 10:00
17 questions I just sort of wanted to go over some of 10:01
18 the basic instructions. 10:01

19 You know, when I ask a question, you, of 10:01
20 course, need to answer the question orally. She 10:01
21 won't be able to sort of read any head nods or 10:01
22 anything like that. If you don't understand a 10:01
23 question, please let me know and I can rephrase it. 10:01

24 And we need to take turns so the courter 10:01
25 can accurately capture what each of us says without 10:01

1 P. MITCHELL

2 us talking over each other. So I'll do my best not 10:01
3 to talk over you, and if you can do your best not to 10:01
4 talk over me. And then, also, you know, please 10:01
5 answer the question I ask you and only the question I 10:01
6 ask you. We, of course, want you to provide truthful 10:01
7 and complete responses to my questions. 10:01

8 And I'm going to be asking you today 10:01
9 about your independent recollection of past events. 10:01
10 If you don't have an independent recollection of 10:01
11 that, you know, please just say that you don't. I'm 10:02
12 not asking you to speculate or guess but. If I do 10:02
13 want you to do that, I'll tell you specifically to 10:02
14 speculate or guess. 10:02

15 Okay? 10:02

16 A Okay. 10:02

17 Q And I'll ask you a number of questions 10:02
18 about what you did and, by that, I'm asking about you 10:02
19 personally or specifically, and not about the team in 10:02
20 general or sort of the royal you, as you could say. 10:02

21 A Pardon. What's the last part? 10:02

22 Q The royal you or like the royal we, like 10:02
23 you in combination with other people. 10:02

24 I'm asking what you did specifically. 10:02

25 A Okay. 10:02

1 P. MITCHELL

2 Q All right. I'd like to start talking a 10:02
3 little bit about your background. 10:02

4 Where did you attend undergraduate? 10:02

5 A Jacksonville State University in 10:02
6 Jacksonville, Alabama. 10:02

7 Q And when did you graduate? 10:02

8 A December of 1987. 10:02

9 Q Okay. And where did you attend law 10:02
10 school? 10:02

11 A University of Alabama School of Law. 10:03

12 Q And when did you graduate from law 10:03
13 school? 10:03

14 A 1991. 10:03

15 Q All right. When were you admitted to the 10:03
16 Alabama State Bar? 10:03

17 A The fall of 1991. 10:03

18 Q And where was your first job as an 10:03
19 attorney? 10:03

20 A Legal Services Corporation of Alabama. 10:03

21 Q And what type of work did you do there? 10:03

22 A Civil legal services for indigent 10:03
23 qualified folks under the Legal Services Corporation 10:03
24 or guidelines. 10:03

25 Q And how long did you work there? 10:03

1 P. MITCHELL

2 A Until April of 1993. 10:03

3 Q Okay. And what was your next job after 10:03

4 that? 10:03

5 A I returned to Decatur, Alabama and began 10:03

6 practicing with Bingham Edwards. 10:03

7 Q I'm sorry. Can you say that again? 10:04

8 A Bingham, B-I-N-G-H-A-M, Edwards. 10:04

9 Q And did you start there in April 1993? 10:04

10 A Yes, ma'am. 10:04

11 Q And what type of work were you doing at 10:04

12 Bingham and Edwards? 10:04

13 A General practice of law. 10:04

14 Q Okay. And where did you work after 10:04

15 Bingham and Edwards? 10:04

16 A I had a law school classmate of mine join 10:04

17 Bingham and I, and we formed Edwards, Mitchell and 10:04

18 Reeves in -- I believe it was 1998. 10:04

19 Q Okay. 10:04

20 A Same location, different personnel. 10:04

21 Q And when did you leave Edward, Mitchell 10:04

22 and Reeves? 10:04

23 A December 31st of 2007 -- no -- 2007. 10:05

24 Q Are you currently a practicing attorney? 10:05

25 A Yes. 10:05

1 P. MITCHELL

2 Q Where do you currently practice? 10:05

3 A Harris, Caddell & Shanks. 10:05

4 Q And what city is that in? 10:05

5 A Decatur, Alabama. 10:05

6 Q Do you currently serve as appointed 10:05

7 counsel for any defendants in a criminal case? 10:05

8 A No. 10:05

9 Q And how do most of your clients find you? 10:05

10 A Either through referrals, associations 10:05

11 with our law firm, internet. 10:05

12 Q Okay. When did you begin representing 10:05

13 people in criminal cases? 10:05

14 A It would have been around April of 1993. 10:05

15 Q Okay. Prior to taking on Mr. Maples' 10:06

16 case, had you represented a paying client in a 10:06

17 criminal case? 10:06

18 A Yes. 10:06

19 Q Can you give me an approximate estimate 10:06

20 of how many criminal cases you were involved in prior 10:06

21 to your representation of Mr. Maples? 10:06

22 A It would just be an estimate, if you want 10:06

23 that. 10:06

24 Q Yes, please. 10:06

25 A Probably between 100 and 200. 10:06

1 P. MITCHELL

2 Q Okay. Had you ever represented someone 10:06
3 in a criminal trial before Mr. Maples? 10:07

4 A No. 10:07

5 Q Did you have any experience with a 10:07
6 capital case before Mr. Maples' case? 10:07

7 A No. 10:07

8 Q So just to confirm, when you were 10:07
9 appointed to represent Mr. Maples, you had never 10:07
10 conducted or prepared for a penalty phase of a 10:07
11 capital case before? 10:07

12 A I have never been involved in a capital 10:07
13 case before, no. 10:07

14 Q Had you ever attended a capital trial 10:07
15 before you were appointed as Mr. Maples' counsel? 10:07

16 A I don't recall. 10:07

17 Q Had you ever done so by the time of 10:07
18 Mr. Maples' trial? 10:07

19 A I don't recall. 10:07

20 Q Had you ever attended a sentencing 10:07
21 portion of a capital case before you were appointed 10:07
22 as Mr. Maples' counsel? 10:07

23 A I don't recall if I was. 10:08

24 Q Had you ever done so by the time of 10:08
25 Mr. Maples' trial? 10:08

1 P. MITCHELL

2 A I don't have a recollection of that. 10:08

3 Q Okay. Were you working on other cases at 10:08

4 the same time you were representing Mr. Maples? 10:08

5 A Yes. 10:08

6 Q Were you working on other cases for 10:08

7 paying clients? 10:08

8 A Yes. 10:08

9 Q Were you working as appointed counsel on 10:08

10 other criminal cases? 10:08

11 A I imagine that I was. 10:08

12 Q Do you have any independent recollection 10:08

13 of that or -- 10:08

14 A That was a significant part of my 10:08

15 practice, so I would assume that it was. I can't 10:08

16 name any specific cases, but from the time that I've 10:08

17 returned to Decatur I have taken on criminal cases. 10:08

18 Before I went to Harris Caddell, it 10:08

19 was -- I had always maintained some criminal 10:08

20 representation. 10:08

21 Q Okay. How did you come to be appointed 10:08

22 as counsel for Mr. Maples? 10:09

23 A Judge Craig asked if I would assist him 10:09

24 as junior counsel, and I told him that I would. I 10:09

25 had a relationship with Judge Craig and he asked 10:09

1 P. MITCHELL

2 Judge Thompson, who was the presiding judge over 10:09

3 Mr. Maples' case, to appoint me and he did so. 10:09

4 Q And how did you know Mr. Craig? 10:09

5 A Mr. Craig was a -- was formerly in the 10:09
6 law firm with Mr. Edwards where I began practicing. 10:09

7 Q Okay. 10:09

8 A And I got to know him from that 10:09
9 relationship. 10:09

10 Q Okay. When were you appointed to serve 10:09
11 as counsel for Mr. Maples? 10:09

12 A It would be speculation, but I believe it 10:09
13 was sometime mid '95, maybe. I don't know. The 10:09
14 records would have to reflect. You'd have to see the 10:09
15 records. 10:09

16 MS. SOULE: I'd like to mark this 10:10
17 as Exhibit 1. 10:10

18 (Mitchell Deposition Exhibit No. 1 01:33
19 was marked for the record.) 01:33

20 BY MS. SOULE: 10:10

21 Q I'll give you a second to look at this. 10:10
22 If it helps, I'm just going to ask you about the 10:10
23 first couple of pages. 10:10

24 A Okay. 10:11

25 Q Do you recognize this document? 10:11

1 P. MITCHELL

2 A It appears to be part of the case action 10:11
3 summary and some specific orders for Mr. Maples' 10:11
4 case. 10:11

5 Q Are you familiar with Alacourt? 10:11

6 A I am familiar with Alacourt. 10:11

7 Q Can you describe what Alacourt is? 10:11

8 A Alacourt is a judicial filing system that 10:11
9 came in sometime in the mid 2000s for attorneys and 10:11
10 clerks to keep electronic copies of case files. 10:11

11 Q So I will represent to you that we pulled 10:11
12 this case action summary off of Alacourt. 10:11

13 Do you have any reason to believe that 10:11
14 this is not an accurate copy of the case summary? 10:11

15 A Of the documents that you presented here. 10:11
16 It does not appear to be a full copy of the case 10:11
17 action summary, but I have no reason to believe that 10:12
18 that would not have been a copy of the actual 10:12
19 documents uploaded from the paper file to the 10:12
20 Alacourt system. 10:12

21 Q Okay. 10:12

22 A When it came on-line. 10:12

23 Q Okay. Can you turn to the second page. 10:12

24 So on the second page it lists -- there's 10:12
25 a table and it says -- an entry, there's a date. It 10:12

1 P. MITCHELL

2 says September 6, 1995. 10:12

3 And the action reads: The Court hereby 10:12

4 appoints Honorable Phil Mitchell in this case, 10:12

5 effective immediately. The clerk is to provide a 10:12

6 copy of this Order to the District Attorney, Mr. Mark 10:12

7 Craig and Mr. Mitchell. 10:12

8 Do you have any reason to believe that 10:12

9 you were not appointed on September 6th, 1995, as 10:12

10 this document states? 10:12

11 A No. 10:12

12 01:33

13 (Mitchell Deposition Exhibit No. 2 01:33

14 was marked for the record.) 01:33

15 BY MS. SOULE: 01:33

16 Q Do you recognize this document? 10:14

17 A Yes, ma'am. 10:14

18 Q Can you tell me what it is? 10:14

19 A That's my fee declaration in Mr. Maples' 10:14

20 case following conclusion of the trial and 10:14

21 sentencing. 10:14

22 Q And I'll represent to you that we also 10:14

23 pulled this from the docket on Alacourt. 10:14

24 Do you have any reason to believe that 10:14

25 this is not a complete or accurate copy of the fee 10:14

1 P. MITCHELL

2 declaration you filed? 10:14

3 A It appears to be. I don't have any 10:14

4 reason to believe that it's not. 10:14

5 Q Did you prepare this fee declaration 10:14

6 yourself? 10:14

7 A Physically, it's computer generated as 10:14

8 for the time, but my assistant at the time would have 10:14

9 likely prepared the actual first page. 10:14

10 Q Okay. Would you have reviewed it after 10:15

11 your assistant may have prepared it? 10:15

12 A Yes. 10:15

13 Q Would you have ensured that it was 10:15

14 accurate? 10:15

15 A Yes. 10:15

16 Q Who was your assistant at that time? 10:15

17 A Diana L. Johnson. 10:15

18 Q What was the date that this was filed? 10:15

19 A May 19th of 1998 is the stamp filing on 10:15

20 the front page. 10:15

21 Q Is this record solely for your time or 10:15

22 does it also include time spent by Mr. Craig? 10:15

23 A Solely for my time. 10:15

24 Q And why did you submit this declaration 10:15

25 to the court? 10:15

1 P. MITCHELL

2 A To be paid on the appointed case for 10:15

3 Mr. Maples. 10:16

4 Q If you'll look there in the middle of the 10:16

5 page, it looks like there's a Signature of Attorney 10:16

6 and then it lists your name. 10:16

7 Did you sign this form? 10:16

8 A Yes. 10:16

9 Q Did you sign it after reading the 10:16

10 declaration above? 10:16

11 A Yes. 10:16

12 Q So you attested this billing information 10:16

13 was accurate? 10:16

14 A Yes, that's what the attestation is. 10:16

15 Q And you were telling the truth when you 10:16

16 said it was an accurate reflection of your work? 10:16

17 A To the best of my knowledge. 10:16

18 Q Can you look at pages three through ten. 10:16

19 A The numbered pages at the top are you 10:16

20 referring to? 10:16

21 Q Yes. 10:16

22 A Do you want me to look through each entry 10:17

23 or do you want me to look at a specific -- 10:17

24 Q No, just a -- can you tell me what these 10:17

25 pages are, pages three through ten? 10:17

1 P. MITCHELL

2 A Four through ten is the entries of my 10:17
3 time worked on the case and the expenses incurred in 10:17
4 relation to my work on the case. 10:17

5 Q Okay. And if you go through this, it 10:17
6 lists a date and then it lists the professional 10:17
7 services rendered and the time you spent, and then it 10:17
8 has a dollar amount. 10:17

9 Is this an itemized list of the time you 10:17
10 spent on this case? 10:17

11 A Yes. 10:17

12 Q And how would you have prepared this 10:17
13 list? 10:17

14 A This list would have been prepared on a 10:17
15 computer program contemporaneously as the case 10:18
16 progressed. 10:18

17 Q Okay. So you would enter your time in on 10:18
18 a daily basis as you were going through the case? 10:18

19 A I can't recall if it was daily, but it 10:18
20 was contemporaneously as the time was incurred. 10:18

21 Q Okay. What was your practice at the time 10:18
22 to ensure your billing was correct? 10:18

23 A This would be entered in the computer 10:18
24 program and when the matter was concluded, if it was 10:18
25 an appointed matter, the bill would be printed and I 10:18

1 P. MITCHELL

2 would review the bill, review the entries, review the 10:18
3 rates to see that it was generating the proper amount 10:18
4 due for the time entries. 10:18

5 Q Okay. Can you go back to page one. I'd 10:19
6 like to sort of look at sort of the third row down 10:19
7 where it starts with, The undersigned attorney 10:19
8 declares that on September 6th, 1995. 10:19

9 If you see there, it lists four numbers 10:19
10 on the left side and it lists, in-court appearance, 10:19
11 out-of-court preparation, trial level, out-of-court 10:19
12 preparation, appellate level, extraordinary expenses. 10:19

13 Is this a table listing the hours that 10:19
14 you spent for each of those types of representation? 10:19

15 A The numbers past the total hours would be 10:19
16 the total hours spent. 10:20

17 Q Okay. 10:20

18 A The 79.74 in-court appearance and the 10:20
19 180.2 for out-of-court preparation, at the trial 10:20
20 level. 10:20

21 Q Okay. And then what would be -- so if 10:20
22 you -- let's talk about in-court appearances first. 10:20

23 Am I correct then that you billed for 10:20
24 700 -- 79.7 -- sorry. Just to correct the record, it 10:20
25 is 79.7 -- hours for in-court appearances? 10:20

1 P. MITCHELL

2 A That's what it shows on this form. 10:20

3 Q And was there a cap on the amount of 10:20

4 in-court hours you could be reimbursed for? 10:20

5 A Not in connection with a capital case. 10:20

6 As I recall, all of your in-court hours were paid at 10:20

7 the in-court hourly rate. 10:20

8 Q And then is it correct that for 10:20

9 out-of-court preparation of the trial, I believe you 10:20

10 billed 180.2 hours? 10:21

11 A That's what the form shows, yes. 10:21

12 Q Okay. And was there a cap on the amount 10:21

13 of hours you could be reimbursed for out-of-court 10:21

14 preparation? 10:21

15 A Yes, ma'am, as I recall, there was \$1,000 10:21

16 cap on capital cases for the amount of time that you 10:21

17 could bill for as an appointed attorney for 10:21

18 out-of-court preparation work. 10:21

19 Q So am I correct, then, that your fee 10:21

20 declaration shows that you worked more out-of-court 10:21

21 hours than the cap; is that correct? 10:21

22 A What is 180.2 times 20? I think that's 10:21

23 significantly more than \$1,000, so yes. 10:21

24 Q So is it correct that you continued to 10:21

25 bill and detail your out-of-court preparation time 10:22

1 P. MITCHELL

2 that you spent after you exceeded the cap? 10:22

3 A Yes. 10:22

4 Q I think that's all the questions for this 10:22

5 for now. We might go back to it later. 10:22

6 A May I ask a question or can we go off the 10:22

7 record for just a second? 10:22

8 MS. SOULE: Sure. 10:22

9 (Brief pause.) 10:22

10 BY MS. SOULE: 10:22

11 Q Did you utilize an investigator to assist 10:22

12 you with Mr. Maples case? 10:23

13 A I have to answer that with yes, we did, 10:23

14 even though your -- the start of your question was 10:23

15 only what I did. I have to answer that as yes, we 10:23

16 did. 10:23

17 Q Did you personally direct or oversee the 10:23

18 investigators's work? 10:23

19 A Partially. 10:23

20 Q And what was the investigator's name? 10:23

21 A Johnny Nesmith. 10:23

22 Q You said that you partially oversaw his 10:23

23 work. Who else oversaw his work? 10:23

24 A Judge Mark Craig. He was the lead 10:23

25 counsel on the case. 10:23

1 P. MITCHELL

2 Q Do you recall, sitting here today, that 10:23
3 Mr. Nesmith did specifically towards developing 10:23
4 evidence for the penalty phase of Mr. Maples' case? 10:23

5 A That may get into some issues that are 10:24
6 outside of the penalty phase. I don't know that I 10:24
7 want to respond to that unless you're willing to 10:24
8 waive the attorney-client privilege. 10:24

9 Q I'm only asking you specifically about 10:24
10 work he did on the penalty phase. 10:24

11 A I don't know that I can answer that 10:24
12 question that way, without getting into my 10:24
13 understanding might extend beyond the penalty phase. 10:24

14 MS. SOULE: Can we go off the 10:24
15 record for a second. 10:24

16 (Brief pause.) 10:26

17 BY MS. SOULE: 10:26

18 Q Let me see if I can rephrase this. 10:26

19 A Okay. 10:26

20 Q As you're sitting here today, do you 10:27
21 recall yourself personally directing Mr. Nesmith to 10:27
22 investigate anything specific to the penalty phase? 10:27

23 A As I sit here today, I cannot recall 10:27
24 anything specific that I directed him to investigate. 10:27

25 Q Okay. When you were appointed to 10:27

1 P. MITCHELL

2 represent Mr. Maples, were you aware that it was a 10:27
3 capital case? 10:27

4 A Yes. 10:27

5 Q Were you aware that there was a videotape 10:27
6 that appeared to show Mr. Maples' confession to the 10:27
7 crimes he was charged with? 10:27

8 A At the time that I was appointed? 10:27

9 Q At any time during your representation. 10:27

10 A Yes. 10:28

11 Q Did you become aware of that videotape 10:28
12 early on in your representation of him? 10:28

13 A I believe so. 10:28

14 Q Okay. So you did not learn of the 10:28
15 videotape right before the trial? 10:28

16 A No. 10:28

17 Q Did you have any kind of training on 10:28
18 capital cases when you were appointed to represent 10:28
19 Mr. Maples? 10:28

20 A No. 10:28

21 Q During your representation of Mr. Maples, 10:28
22 did you participate in any kind of training on 10:28
23 capital cases? 10:28

24 A I don't recall specifically. 10:28

25 Q During your representation of Mr. Maples, 10:28

1 P. MITCHELL

2 did you use or reference any manuals or aids 10:28

3 regarding capital cases? 10:28

4 A Possibly. I don't recall specifically 10:28
5 the names of any. 10:29

6 Q Okay. During your representation of 10:29
7 Mr. Maples, do you recall talking to any lawyers who 10:29
8 had experience with capital cases? 10:29

9 A Yes. 10:29

10 Q Who? 10:29

11 A My cocounsel, Judge Mark Craig. 10:29

12 Q Anyone else? 10:29

13 A Probably, but I can't recall any specific 10:29
14 names. 10:29

15 Q Okay. What was your role in preparing 10:29
16 for the penalty phase of Mr. Maples' trial? 10:29

17 A To assist Judge Craig in any tasks that 10:30
18 he needed me to assist him with in connection with 10:30
19 the penalty phase of the trial. 10:30

20 Q Did you take all of your direction, then, 10:30
21 from Mr. Craig in relation to the penalty phase? 10:30

22 A I would say that he, as lead counsel, 10:30
23 would have given the direction, yes. 10:30

24 Q Do you know who Dr. Allen Sheely is? 10:30

25 A I do. 10:30

1 P. MITCHELL

2 Q Who is he? 10:30

3 A He is an expert that was retained by us 10:30

4 in connection with Mr. Maples' case. 10:30

5 Q Okay. Were you personally involved in 10:30

6 retaining Dr. Sheely as an expert? 10:30

7 A I would -- I believe that I was involved 10:30

8 in discussing and vetting his appointment. 10:31

9 Q Do you recall how Dr. Sheely was 10:31

10 identified as an expert? 10:31

11 A Judge Craig identified him. 10:31

12 Q Did you personally interview Dr. Sheely 10:31

13 before he was retained? 10:31

14 A I don't recall. 10:31

15 Q Were you Dr. Sheely's primary contact? 10:31

16 A No. 10:31

17 Q Was Mark Craig Dr. Sheely's primary 10:31

18 contact? 10:31

19 A Yes, Judge Craig was Dr. Sheely's primary 10:31

20 contact. 10:31

21 Q Did you personally provide Dr. Sheely 10:31

22 with instructions about what he was retained to do? 10:31

23 A No. 10:31

24 Q Do you recall whether you gave Dr. Sheely 10:31

25 any records related to Mr. Maples, as you sit here 10:32

1 P. MITCHELL

2 today? 10:32

3 A I believe so. 10:32

4 Q You recall giving him records? 10:32

5 A I believe so. 10:32

6 Q Okay. What records do you recall giving 10:32

7 him specifically? 10:32

8 A I believe he was given the records that 10:32

9 were subpoenaed from the North Alabama Regional 10:32

10 Hospital, which was the Quest Drug Program, and the 10:32

11 medical records from the Decatur General Hospital 10:32

12 and/or Decatur General West Hospital. 10:32

13 Q You said you believe so. Do -- 10:32

14 A Well, I said I believe that I provided 10:32

15 him. I am confident that he was provided those 10:32

16 records. 10:32

17 Those records came through subpoenas that 10:32

18 were issued by me through my office, and I have 10:32

19 information that indicates that those records were 10:32

20 provided to him. 10:32

21 Q Do you have a memory, sitting here today, 10:33

22 of providing him with those records? 10:33

23 A Physically delivering that to him? No, I 10:33

24 do not have a memory today that I physically 10:33

25 delivered those records to him. 10:33

1 P. MITCHELL

2 Q Do you have a memory of providing them to 10:33
3 him in any other way, as you sit here today? 10:33

4 A I don't know that I can answer that 10:33
5 question specifically. I know that he received the 10:33
6 records. 10:33

7 Q I'm asking about your memory as you sit 10:33
8 here today. 10:33

9 A No, I don't know how that he received the 10:33
10 records that were received by me through the 10:33
11 subpoenas. 10:33

12 Q I'm not sure you're -- you're answering 10:33
13 the question I'm asking. 10:33

14 A Okay. 10:33

15 Q As you sit here today, do you have a 10:33
16 recollection of giving Dr. Sheely records related to 10:33
17 Mr. Maples? 10:33

18 A A recollection, yes. 10:33

19 Q Can you tell me what that recollection 10:33
20 is? 10:33

21 A I recall that he received records of -- 10:33
22 that I've described, through the case, in connection 10:33
23 with his work on Mr. Maples' case. 10:34

24 Q Did you personally make any arrangements 10:34
25 for Dr. Sheely to interview members of Mr. Maples' 10:34

1 P. MITCHELL

2 family? 10:34

3 A I don't recall. 10:34

4 Q Did you personally prepare Dr. Sheely to 10:34
5 testify during the penalty phase? 10:34

6 A No. 10:34

7 Q During your representation of Mr. Maples, 10:34
8 did you retain a medication specialist to assist you 10:34
9 in preparing for the penalty phase of Mr. Maples' 10:35
10 trial? 10:35

11 A No, I did not. 10:35

12 Q Sorry. Can you say that again? 10:35

13 A No, I did not. 10:35

14 Q Thank you. We were just talking over 10:35
15 each other there. 10:35

16 A That's no problem. 10:35

17 Q During your representation of Mr. Maples, 10:35
18 do you recall whether you retained anyone 10:35
19 specifically to assist with the penalty phase? 10:35

20 A Dr. Sheely was retained partially to 10:35
21 represent -- or to provide evidence in the penalty 10:35
22 phase. 10:35

23 Q Is it correct that you also had 10:35
24 Dr. Sheely address issues of mental competency and 10:35
25 mental capacity? 10:35

1 P. MITCHELL

2 A I recall that, yes. 10:35

3 Q Okay. Anyone else beyond Dr. Sheely? 10:35

4 A Repeat your question. 10:36

5 Q Do you recall whether anyone else was 10:36

6 retained specifically to assist with the penalty 10:36

7 phase beyond Dr. Sheely? 10:36

8 A No, I do not recall. 10:36

9 Q Okay. I want to go back to the records 10:36

10 we were discussing that you say that you believe 10:36

11 Dr. Sheely received. 10:36

12 If Dr. Sheely denied receiving those 10:36

13 records, would you dispute his recollection? 10:36

14 A I don't know that I -- that would be his 10:36

15 testimony. I don't know what his testimony would be. 10:36

16 Q Okay. 10:37

17 A It is my recollection that he received 10:37

18 the records that I've discussed. 10:37

19 MS. SOULE: I'd like to mark this. 10:37

20 (Mitchell Deposition Exhibit No. 3 01:33

21 was marked for the record.) 01:33

22 BY MS. SOULE 10:38

23 Q So I'd like you to look at what's marked 10:38

24 as Exhibit 3. 10:38

25 A Okay. 10:38

1 P. MITCHELL

2 Q This is what appears -- well, you can 10:38
3 tell me if you agree with this. 10:38

4 Does this appear to be a letter on a 10:38
5 letterhead of the Alabama Prison Project addressed to 10:38
6 Mark Craig? 10:38

7 A That's what it appears to be. 10:38

8 Q Okay. Have you seen this letter before? 10:38

9 A Not before today. 10:38

10 Q Okay. If you can just sort of read the 10:38
11 letter. 10:38

12 A Okay. Okay. 10:38

13 Q Does this letter offer Mr. Craig 10:39
14 assistance with Mr. Maples' case in relation to the 10:39
15 penalty phase? 10:39

16 A It speaks for itself. I mean, it appears 10:39
17 to provide some avenues for assistance that might be 10:39
18 available. 10:39

19 Q Do you recall hearing about this offer 10:39
20 when you were representing Mr. Maples? 10:39

21 A I do not recall that. 10:40

22 Q Okay. Would it be correct, then, that 10:40
23 you didn't accept this offer? 10:40

24 A The offer was not made to me. I did not 10:40
25 accept that offer. 10:40

1 P. MITCHELL

2 (Mitchell Deposition Exhibit No. 4 01:33

3 was marked for the record.) 01:33

4 BY MS. SOULE: 01:33

5 Q And can you look at what's been marked as 10:40

6 Exhibit 4. This is a document that is titled Alabama 10:40

7 Prison Project Mitigation Program, Capital Murder 10:40

8 Defendant Information Sheets. 10:40

9 Have you seen this document before? 10:40

10 A No, ma'am, not that I recall. 10:40

11 Q Does the handwriting on this document 10:40

12 look like your handwriting? 10:40

13 A No, it does not. 10:40

14 Q What potential witnesses did you meet 10:40

15 with to gather evidence related to mitigation? 10:41

16 A I met -- well, that's -- I think that, 10:41

17 again, is going to get into some of the guilt phase 10:41

18 issues which we've talked about. 10:41

19 Q I'd only like you to tell me the names of 10:41

20 any witnesses that you discussed issues related to 10:41

21 mitigation with. 10:42

22 A Again, that's going to be very difficult 10:42

23 to answer without some potential waiver of the 10:42

24 attorney-client privilege. I don't want to violate 10:42

25 his privilege by answering that question incorrectly 10:42

1 P. MITCHELL

2 based on what I feel I need to protect. 10:42

3 MS. SOULE: Can we take a quick 10:42

4 break. 10:42

5 (Brief pause.) 10:42

6 10:43

7 BY MS. SOULE: 11:05

8 Q So Mr. Mitchell, I want to ask you about 11:05

9 a number of people or groups of people and whether or 11:05

10 not you talked to them about evidence related to 11:05

11 mitigation. 11:05

12 If you spoke to them about evidence 11:05

13 related to guilt, I don't need to know that. All I'm 11:05

14 asking you is whether or not you spoke to them about 11:05

15 evidence related to mitigation. 11:05

16 A What if they were -- spoken to them about 11:05

17 both built and mitigation? 11:05

18 Q I'm just asking about the mitigation 11:05

19 piece. So if you spoke to them about both -- 11:05

20 A So if I spoke to them about both, you do 11:05

21 not want me to respond. 11:05

22 Q No, you can say -- if you spoke to them 11:05

23 about both, it would be true then, correct, that you 11:06

24 spoke to them about mitigation? 11:06

25 A Let me say -- let me phrase with this. I 11:06

1 P. MITCHELL

2 think this may help us. Okay? 11:06

3 In connection with this or any case, but 11:06
4 particularly with a capital case, any witness that 11:06
5 you interview, you would want to collect information 11:06
6 that might be useful in either the guilt phase or the 11:06
7 penalty phase. And so when interviewing a witness as 11:06
8 a lawyer, for any case, I am going to look to all 11:06
9 aspects of the case when I interview any witness. 11:06

10 So I -- I hope that helps. There may be 11:06
11 many that you ask about that my response could be 11:06
12 both. 11:06

13 Q Well, I'm asking you about the mitigation 11:06
14 phase. So I don't need to know if it's both. I just 11:06
15 need to know if you recall asking them about 11:06
16 mitigation. Okay? 11:07

17 Does that -- does that make it clear 11:07
18 about -- 11:07

19 A No, ma'am, it does not. I cannot -- 11:07
20 again, as I've given you the general directive, when 11:07
21 I interview a witness, I interview a witness to 11:07
22 gather information that might be useful for any 11:07
23 aspect of the case. 11:07

24 Q So let's talk about this in specifics. 11:07

25 Did you talk to any of Cory's paternal 11:07

1 P. MITCHELL

2 aunts related to evidence for mitigation, 11:07

3 specifically mitigation? 11:07

4 A I don't recall without specific names. I 11:07

5 don't have an independent recollection of someone 11:07

6 that was Cory's aunt. 11:07

7 Q Did you speak to Margaret Daniels about 11:07

8 evidence related to mitigation? 11:07

9 A I don't recall that name. 11:07

10 Q Did you speak to Dale Ray regarding 11:07

11 evidence related to mitigation? 11:08

12 A I don't recall that name. 11:08

13 Q Did you speak to Lee Daniel related to 11:08

14 evidence for mitigation? 11:08

15 A The name sounds familiar, but I don't 11:08

16 have an independent recollection of a conversation 11:08

17 with -- is that a him or her? 11:08

18 Q A him. 11:08

19 A I don't have an independent recollection 11:08

20 of a conversation with him. 11:08

21 Q Did you speak with Fred Ray related to 11:08

22 evidence for mitigation? 11:08

23 A Not that I recall. 11:08

24 Q Did you speak to any of Cory's cousins on 11:08

25 his father's side related to evidence for mitigation? 11:08

1 P. MITCHELL

2 A Again, without specific names, I don't 11:08
3 have a recollection of who would have been Cory's 11:08
4 cousins. 11:09

5 Q Did you speak to his cousin Shannon -- I 11:09
6 believe her last name was Maples at the time? 11:09

7 A I recall that name. I don't have an 11:09
8 independent recollection, as we sit here today 22 11:09
9 years later, of a conversation that I had with her. 11:09

10 Q Okay. Did you speak to Tracy Maples 11:09
11 related to evidence for mitigation? 11:09

12 A Would be the same answer. I seem to 11:09
13 recall that name, but I don't have an independent 11:09
14 recollection of a conversation that I had with her. 11:09

15 Q We might go back to some other names of 11:09
16 family members. 11:09

17 Did you speak to someone named Tim 11:09
18 Bettingfield related to evidence for mitigation? 11:09

19 A I don't recall that name as I sit here 11:10
20 today. 11:10

21 Q Did you speak to Derek Shelton related to 11:10
22 evidence for mitigation? 11:10

23 A I don't recall that name as I sit here 11:10
24 today. 11:10

25 Q Did you speak to Alan Birdsong related to 11:10

1 P. MITCHELL

2 evidence for mitigation? 11:10

3 A Alan Birdsong was spoken to. 11:10

4 Q Do you recall speaking to Alan Birdsong 11:10
5 related to evidence for mitigation? 11:10

6 A I don't know if I personally spoke with 11:10
7 him. 11:10

8 Q So is it correct, then, that you do not 11:10
9 recall if you spoke to -- 11:10

10 A I do not personally recall speaking to 11:10
11 Alan Birdsong as we sit here today. 11:10

12 Q Okay. Do you recall speaking to Chris 11:10
13 Baisden relating to evidence for mitigation? 11:10

14 A I would have to give the same answer. I 11:11
15 recall that Chris Baisden was spoken to. 11:11

16 Q Do you, as you sit here today, 11:11
17 specifically recall speaking to Chris Baisden 11:11
18 yourself related to evidence for mitigation? 11:11

19 A I not recall as I sit here today if I 11:11
20 personally spoke with Chris Baisden. 11:11

21 Q Okay. Do you recall speaking to any of 11:11
22 Cory's teachers related to evidence for mitigation? 11:11

23 A I don't recall any specific names of his 11:11
24 teachers as I sit here today. If there were specific 11:11
25 names, I -- it might refresh my recollection. 11:11

1 P. MITCHELL

2 Q Do you recall speaking to any teachers, 11:11
3 generally, related to evidence for mitigation? 11:11

4 A As I sit here today, I do not recall 11:11
5 that. 11:11

6 Q Do you recall speaking to any coaches 11:11
7 Cory may have had related to evidence for mitigation? 11:11

8 A I don't have an independent recollection 11:11
9 as I sit here today of that. 11:11

10 Q Okay. Do you recall speaking to Cory's 11:11
11 biological mother relating to evidence related to 11:12
12 evidence related to mitigation? 11:12

13 A No. 11:12

14 Q Do you recall speaking to any of Cory's 11:12
15 biological mother's family related to evidence 11:12
16 related to mitigation? 11:12

17 A Again, without specific names, I don't 11:12
18 have an independent recollection of what members of 11:12
19 the biological family you'd be referring to. 11:12

20 Q Do you have any general recollection of 11:12
21 speaking to any of Cory's biological mother's family 11:12
22 members related to evidence related to mitigation? 11:12

23 A Again, I don't know their status. I 11:12
24 don't have an independent recollection that I can 11:12
25 identify today as someone who is a biological family 11:12

1 P. MITCHELL

2 member to his biological mother. 11:12

3 Q Okay. Thank you. 11:12

4 A That's the best I can do. 11:12

5 Q Do you recall whether you requested any 11:13

6 of Cory -- or Mr. Maples' educational records? 11:13

7 A I don't recall personally doing so. 11:13

8 Q Okay. Do you recall ever reviewing 11:14

9 Cory's educational records? 11:14

10 A As we sit here today, I do not have a 11:14

11 personal recollection of that. 11:14

12 Q Okay. Do you recall if Cory received his 11:14

13 GED? 11:14

14 A I recall that he did. 11:14

15 Q Do you recall if you ever requested 11:14

16 records related to his GED? 11:14

17 A I do not recall personally doing so. 11:14

18 Q Do you recall reviewing any records 11:14

19 related to his GED? 11:14

20 A I do. 11:14

21 Q What records do you recall reviewing? 11:14

22 A I recall reviewing records in the case 11:14

23 that indicated that he received his GED. 11:14

24 Q Okay. 11:14

25 A I cannot identify today specifically 11:14

1 P. MITCHELL

2 which record that was, but I do have a recollection 11:14
3 of records in the case that indicated he'd received 11:15
4 his GED. 11:15

5 Q Do you recall asking Mr. Maples about his 11:15
6 medical history? 11:15

7 A I recall that that was asked of him. 11:15

8 Q Do you recall personally asking him -- 11:15
9 Mr. Maples about his medical history? 11:15

10 A I can't say specifically that I was the 11:15
11 one that asked those questions. So I don't have an 11:15
12 independent recollection that I was the one that 11:15
13 spoke the words to ask him of his medical history. 11:15

14 Q Okay. Do you recall personally obtaining 11:15
15 medical records for Mr. Maples? 11:15

16 A As I've explained before, yes, I do. 11:15

17 Q Do you recall obtaining medical records 11:15
18 for any of Cory's family? 11:16

19 A I do not recall. 11:16

20 Q Do you recall obtaining medical records 11:16
21 related to Mr. Maples' birth? 11:16

22 A I do not independently recall doing so. 11:16

23 (Mitchell Deposition Exhibits Nos. 01:33

24 5 and 6 were marked for the record.) 01:33

25

1 P. MITCHELL

2 BY MS. SOULE: 01:33

3 Q So, Mr. Mitchell, you've been handed 11:17

4 what's been marked as Exhibit 5 and Exhibit 6. 11:17

5 Let's talk about Exhibit 5. Can you take 11:17

6 a look at Exhibit 5. Do you recognize this document? 11:17

7 A The document appears to be medical 11:19

8 records from Decatur General Hospital on Mr. Maples. 11:20

9 Q Do you recall whether you obtained these 11:20

10 records during your representation of Mr. Maples? 11:20

11 A I obtained medical records pursuant to a 11:20

12 subpoena for his medical records from Decatur General 11:20

13 Hospital, so I have no reason to believe that this is 11:20

14 not the medical records we obtained. 11:20

15 Q Can you look at what's been marked as 11:20

16 Exhibit 6. 11:20

17 Do you recognize what has been marked as 11:22

18 Exhibit 6? 11:22

19 A They appear to be additional medical 11:22

20 records on Cory Maples from Decatur General Hospital. 11:22

21 Q And do you recall whether you obtained 11:22

22 these records during your representation of 11:22

23 Mr. Maples? 11:22

24 A Again, that would be the same response. 11:22

25 I would have no reason to believe that 11:22

1 P. MITCHELL

2 they were not. They were -- we submitted a subpoena 11:22
3 to Decatur General Hospital and records were 11:22
4 produced. 11:22

5 Q Can you turn -- there's numbers at the 11:22
6 bottom of the page. Can you turn to page that 11:22
7 ends -- it's labeled Maples-TC-0000206 in Exhibit 6, 11:22
8 please? 11:23

9 Can you -- if you'll look on this page, 11:23
10 it has a section at the top of the page that says 11:23
11 Chief Complaint. Can you just look at that real 11:23
12 quick? 11:23

13 A Yes, ma'am. 11:23

14 Q To the extent that you can read the 11:24
15 handwriting there, can you tell me what that says or 11:24
16 what you understand it to say? 11:24

17 A Do you want me to read it? 11:24

18 Q No, you can summarize it. That's fine. 11:24

19 A It appears to be a medical record 11:24
20 relating to a fall that Cory had where he injured -- 11:24
21 hit his head and injured his right shoulder. 11:24

22 (Mitchell Deposition Exhibit No. 7 01:33
23 was marked for the record.) 01:33

24 BY MS. SOULE: 01:33

25 Q Mr. Mitchell, you've been handed what's 11:28

1 P. MITCHELL

2 been marked as Exhibit 7. Do you recognize this 11:28
3 document? 11:28

4 A Yes. Those appear to be the medical 11:28
5 records for Mr. Maples that were produced by the 11:28
6 North Central Alabama Mental Health Board and the 11:28
7 drug treatment program that they have -- had 11:28
8 operated, I think, at that time, Quest Recovery, 11:28
9 pursuant to a subpoena that was issued in Mr. Maples' 11:28
10 case. 11:28

11 Q Okay. Sitting here today, do you recall 11:28
12 reviewing these records during your representation of 11:28
13 Mr. Maples? 11:28

14 A I recall that those records were reviewed 11:28
15 by me, yes. 11:28

16 Q Can you look at the bottom to what is 11:28
17 marked Maples-TC-0000245. So in the third box 11:29
18 down -- actually, let's go back to the start of this. 11:29

19 Let's go to the page before, which is 11:29
20 Maples-TC-0000244. I'd just like you to look at this 11:29
21 document, that goes through Maples-TC-0000253. 11:29

22 A Through 253? 11:30

23 Q Uh-huh. 11:30

24 A Okay. 11:30

25 Q So this document is titled Psychosocial 11:30

1 P. MITCHELL

2 History, Assessment, Adult Version. 11:30

3 Would you agree that this document 11:30

4 appears to be completed with information from Cory -- 11:30

5 from Mr. Maples? 11:30

6 A I don't know whether it was completed 11:30

7 from information from Cory or someone else related, 11:31

8 but it appears to be related to Mr. Maples. 11:31

9 Q Let's go back to the page marked 11:31

10 Maples-TC-0000245? 11:31

11 A Okay. 11:31

12 Q If you look down at the third box there, 11:31

13 it lists Family Deaths. Do you recall seeing that 11:31

14 Mr. Maples' cousin died of a gun shot at the age of 11:31

15 16 in 1990? 11:31

16 A Do I recall seeing that? 11:31

17 Q Uh-huh. 11:31

18 A When? 11:31

19 Q When you were representing Mr. Maples and 11:31

20 you were reviewing these documents. 11:31

21 A I would have reviewed that when I 11:31

22 reviewed the document. I don't have an independent 11:31

23 recollection of anything that's in the document 11:31

24 without looking at it today. 11:31

25 Q Okay. Can we go to what's at the -- 11:31

1 P. MITCHELL

2 labeled at the bottom Maples-TC-0000248, and I'd like 11:32
3 you to look at what's marked as questions number 11:32
4 seven and number eight. 11:32

5 Question seven says have you ever thought 11:32
6 of ending your own life or the life of someone else. 11:32
7 And the handwritten answer says: Just got so 11:32
8 depressed I wanted it to end, my life. 11:32

9 Then I think it says: No current 11:32
10 ideations or plans. Last thoughts were two weeks 11:32
11 ago. 11:32

12 Is my reading of that consistent with 11:32
13 your reading? 11:32

14 A That's what it appears to say, yes. 11:33

15 Q Do you recall seeing Mr. Maples' answer 11:33
16 at the time and being aware that he had contemplated 11:33
17 suicide? 11:33

18 A Yes, I was aware of that during the 11:33
19 representation of him. 11:33

20 Q Do you recall, sitting here today, this 11:33
21 answer in this document, being aware of it at the 11:33
22 time of your representation of Mr. Maples? 11:33

23 A I think I've answered that. I was aware 11:33
24 of his suicidal ideations at the time of 11:33
25 representation. 11:33

1 P. MITCHELL

2 Q Okay. Were you -- I'm trying to 11:33
3 understand if you were aware of it as a general 11:33
4 matter or if you were aware of it from this document. 11:33

5 A I cannot tell you if I can recall that 11:33
6 today. I can tell you that I reviewed the documents 11:33
7 as they came in with the records. 11:33

8 Q Okay. Let's look at question eight. The 11:33
9 question reads, Have you ever attempted to end your 11:34
10 own life. And then yes is circled. 11:34

11 And then the question asks, If yes, 11:34
12 describe the incidents. And the written answer there 11:34
13 says, Slit wrist four years ago under the influence. 11:34

14 Was my reading of that consistent with 11:34
15 your reading? 11:34

16 A That's what it appears to say from my 11:34
17 reading. 11:34

18 Q Do you recall reviewing those answers 11:34
19 that were provided, at the time of your 11:34
20 representation? 11:34

21 A I don't have an independent recollection 11:34
22 of reviewing this document, but I did review the 11:34
23 document as the records came in. 11:34

24 Q If you go to the next page, which is 11:34
25 marked Maples-TC-0000249. If you will look at what's 11:34

1 P. MITCHELL

2 marked as question 17. It lists other types of 11:35

3 hospitalizations and then it says Psychiatric, none. 11:35

4 Then under Medical it lists, Three years 11:35

5 ago a snake bite. In parentheses, poisonous. And 11:35

6 then two years ago, a 50-foot fall, concussion. 11:35

7 Appears to say FX arm, and then it looks like some of 11:35

8 the writing there is cut off. I'm not sure if you 11:35

9 can read that better than I can. 11:35

10 Is what I read there accurate and 11:35

11 consistent with what you're reading it? 11:35

12 A What you have read, I would believe that 11:36

13 the designation there is fracture of arm, something 11:36

14 ribs and knee, wrist and -- I can't make out the last 11:36

15 part. 11:36

16 Q Okay. You're better at handwriting than 11:36

17 I am. 11:36

18 Let's go to what is a couple pages later. 11:36

19 It's Maples-TC-0000253. I'd like you to look at the 11:36

20 bottom -- towards the bottom of the page where it 11:36

21 says Interviewer's Signature, and then a handwritten 11:36

22 name, Kathy S. Goodwin. 11:37

23 Do you know who Ms. Goodwin was based on 11:37

24 this document? 11:37

25 A Based on this document, no, I do not. 11:37

1 P. MITCHELL

2 She signed as the interviewer's signature with a 11:37
3 title and date. And it also says the same for 11:37
4 Program Director Signature. 11:37

5 So reviewing this now, I would assume 11:37
6 that she is the program director for this agency. 11:37

7 Q Okay. Do you recall speaking with 11:37
8 Ms. Goodwin? 11:37

9 A I don't recall today independently 11:37
10 speaking with Ms. Goodwin. 11:37

11 Q Okay. Do you recall personally speaking 11:37
12 with anyone at Quest? 11:37

13 A I don't have an independent recollection 11:37
14 today of who I would have spoke with at Quest. 11:37

15 Q Do you recall speaking with anyone at 11:38
16 Quest? 11:38

17 A I had to speak with someone at Quest to 11:38
18 discuss the records that were needed and to get the 11:38
19 information that they needed to produce the records. 11:38

20 Q Okay. Do you recall speaking to anyone 11:38
21 at Quest beyond your conversations to get these 11:38
22 records? 11:38

23 A Not that I recall as I sit here today. 11:38

24 Q Okay. Thank you. 11:38

25 In your work as an attorney, have you 11:39

1 P. MITCHELL

2 ever received records from third parties related to 11:39
3 your cases? 11:39

4 A Yes. 11:39

5 Q Would you keep a copy of records you 11:39
6 received from third parties as part of your regular 11:39
7 practice? 11:39

8 A Yes. 11:39

9 Q Would you keep records from third parties 11:39
10 you received after you've finished a particular case 11:39
11 as part of your typical practice? 11:39

12 A Repeat that. 11:39

13 Q Would you keep records from third parties 11:39
14 that you received in relation to a case after the 11:39
15 case had concluded as part of your regular practice? 11:39

16 A As part of my regular practice, anything 11:39
17 that comes in related to a case would be kept within 11:39
18 the file. 11:39

19 Q Okay. Was that your practice during the 11:39
20 time when you represented Mr. Maples? 11:39

21 A Yes. 11:39

22 Q When you interview potential witnesses, 11:40
23 do you do anything to ensure you don't forget what 11:40
24 they said? 11:40

25 A Yes. 11:40

1 P. MITCHELL

2 Q Would you create interview memos to 11:40
3 document what was said during the course of an 11:40
4 interview? 11:40

5 A I have, on occasion, in connection with 11:40
6 my practice over the years. 11:40

7 Q Was that your practice during your 11:40
8 representation of Mr. Maples? 11:40

9 A Possibly. I don't know. I can't answer 11:40
10 that question. 11:40

11 Q Okay. 11:40

12 A As we sit here today. 11:40

13 Q Would you keep interview memos after a 11:40
14 case concluded? 11:40

15 A If I made an interview memo or notes from 11:40
16 discussing a case with a witness, that would be 11:40
17 maintained in my files for that particular matter. 11:41

18 Q And that was your regular practice? 11:41

19 A Yes. 11:41

20 Q Was that your regular practice during the 11:41
21 time you represented Mr. Maples? 11:41

22 A Yes. 11:41

23 Q Do you recall throwing away any documents 11:41
24 related to Mr. Maples? 11:41

25 A Not that I recall. 11:41

1 P. MITCHELL

2 Q During the sentencing or penalty phase of 11:41
3 Mr. Maples' trial, Mr. Craig stated that Mr. Maples 11:41
4 had assisted law officers in the past in relation to 11:41
5 a drug bust. Do you know what he was talking about? 11:41

6 A I recall information about that. 11:42

7 Q Do you recall speaking to anyone at the 11:42
8 Decatur Police regarding assistance Cory may have 11:42
9 provided them? 11:42

10 A I don't have an independent recollection 11:42
11 that I did that. I cannot say whether it was me or 11:42
12 someone else. 11:42

13 Q But you don't recall doing that 11:42
14 personally? 11:42

15 A I don't have an independent recollection 11:42
16 that I personally spoke with a police officer at the 11:42
17 Decatur Police Department regarding that. 11:42

18 Q Okay. Do you recall where Mr. Maples was 11:42
19 incarcerated before he was convicted? 11:42

20 A At the Morgan County Jail in Decatur, 11:42
21 Alabama. 11:42

22 Q Do you recall personally interviewing 11:42
23 anyone from the Morgan County Jail regarding 11:42
24 Mr. Maples? 11:43

25 A As I sit here today, I don't have a 11:43

1 P. MITCHELL

2 personal recollection of any such interview. 11:43

3 Q Okay. Do you recall personally 11:43
4 investigating Mr. Maples' physical and mental health 11:43
5 while he was in jail, prior to his conviction, for 11:43
6 purposes of the penalty phase? 11:43

7 A Yes, I have a recollection that that was 11:43
8 done. 11:43

9 Q Do you recall personally investigating 11:43
10 that? 11:43

11 A I recall that I was involved and informed 11:43
12 on the investigation of that aspect of the case. 11:43

13 Q Can you -- I think my question is a yes 11:43
14 or no question. 11:44

15 Do you recall personally investigating 11:44
16 Mr. Maples' physical and mental health while he was 11:44
17 in jail, prior to his conviction, for purposes of the 11:44
18 penalty phase? 11:44

19 A Again, I recall that that was done. I 11:44
20 can't tell you if we -- as I sit here today, whether 11:44
21 it was me or whether it was someone else, but I 11:44
22 recall that that was done. 11:44

23 Q I'm asking about whether you recall if 11:44
24 you have -- if you personally did that. It's a yes 11:44
25 or no question. 11:44

1 P. MITCHELL

2 A As I sit here today 22 years later, I 11:44
3 cannot tell you yes or no whether I personally did 11:44
4 that, from my recollection. 11:44

5 Q So does that mean you do not recall 11:44
6 investigating? 11:44

7 A I do not recall, as we sit here today, 11:44
8 whether I did or not, personally. 11:44

9 Q Do you know whether Mr. Maples was taking 11:45
10 any medication while he was in jail awaiting trial? 11:45

11 A I believe he was, but I don't know the 11:45
12 specifics, as I sit here today. 11:45

13 Q Did you personally inform Mr. Maples' 11:45
14 father that he would be testifying during the penalty 11:45
15 phase? 11:45

16 A I don't recall that I personally did so. 11:45

17 Q Did you personally inform Mr. Maples' 11:45
18 stepmother that she would be testifying during the 11:45
19 penalty phase? 11:46

20 A I don't have an independent recollection, 11:46
21 as I sit here today, that I did that. 11:46

22 Q Did you personally prepare Mr. Maples' 11:46
23 father to testify during the penalty phase? 11:46

24 A I don't recall the extent of my 11:46
25 involvement in preparing him for the penalty phase as 11:46

1 P. MITCHELL

2 I sit here today. 11:46

3 Q Did you personally prepare Mr. Maples' 11:46

4 stepmother to testify during the penalty phase? 11:46

5 A Again, I don't recall the extent of my 11:46

6 involvement in preparing her to testify, as I sit 11:46

7 here today. 11:46

8 Q Did you speak to Mr. Maples' uncle, 11:46

9 Kenneth Maples, prior to the penalty phase? 11:46

10 A I don't independently recall if I was the 11:47

11 lawyer who spoke with Mr. Maples, Kenneth Maples, 11:47

12 prior to the penalty phase. 11:47

13 Q Did you personally prepare Kenneth Maples 11:47

14 to testify during the penalty phase? 11:47

15 A Again, I don't independently recall today 11:47

16 the extent of my involvement in preparing Mr. Kenneth 11:47

17 Maples for testimony in the penalty phase. 11:47

18 MS. SOULE: Okay. I'd like to take 11:47

19 a short break. 11:47

20 (Brief pause.) 11:48

21 MS. SOULE: Are you ready? 11:48

22 THE WITNESS: Sure. 12:18

23 MS. SOULE: Beth, are you ready? 12:18

24 MS. HUGHES: Yes. 12:18

25

1 P. MITCHELL

2 BY MS. SOULE: 12:18

3 Q Mr. Mitchell, we were talking earlier 12:18
4 about records that you say that Dr. Sheely may have 12:18
5 received. 12:18

6 Do you recall personally mailing any 12:18
7 records to Dr. Sheely? 12:18

8 A From an independent recollection? 12:18

9 Q Yes. 12:18

10 A I don't independently recall that. 12:18

11 Q Okay. Do you recall asking your 12:18
12 assistant to mail records to Dr. Sheely? 12:19

13 A Again, I don't have an independent 12:19
14 recollection as I sit here today, to that. 12:19

15 Q Do you recall handing them to Dr. Sheely? 12:19

16 A I do not recall handing any records to 12:19
17 Dr. Sheely. 12:19

18 Q Okay. Do you recall transferring them in 12:19
19 any other way than -- 12:19

20 A Yes. Go ahead, I'm sorry. 12:19

21 Q Do you recall transferring them to 12:19
22 Dr. Sheely in any other specific way? 12:19

23 A Yes. I recall that the records were 12:19
24 transferred to Dr. Sheely. 12:19

25 Q How were they transferred? 12:19

1 P. MITCHELL

2 A They would have been transferred to him 12:19
3 either through my office or through Mark's office, 12:19
4 but I don't have an independent recollection as I sit 12:19
5 here today that I did that. 12:20

6 Q So I want to make sure that we're clear. 12:20
7 You don't have a recollection of giving 12:20
8 records to Dr. Sheely, but you believe that he 12:20
9 received them? 12:20

10 A That is my recollection. 12:20

11 Q Okay. 12:20

12 A Correct. 12:20

13 Q Do you have any records corroborating 12:20
14 that he received them? 12:20

15 A I don't know. 12:20

16 Q We also spoke earlier about records 12:20
17 related to Mr. Maples' GED. 12:20

18 And I believe you said you recall 12:20
19 reviewing records that indicated that Mr. Maples 12:20
20 received his GED; is that an accurate summary of what 12:20
21 you said? 12:20

22 A I believe so. 12:20

23 Q Okay. What records were those? 12:20

24 A I cannot specifically identify those 12:20
25 records as I sit here today. 12:20

1 P. MITCHELL

2 Q Okay. Do you recall receiving a copy of 12:20
3 his test scores? 12:21

4 A I don't independently recall that as I 12:21
5 sit here today. 12:21

6 Q Okay. Do you recall receiving a copy of 12:21
7 his certificate? 12:21

8 A I don't recall receiving a copy of his 12:21
9 certificate. 12:21

10 Q Okay. During your representation of 12:21
11 Mr. Maples, did you talk to Diane Farrell regarding 12:21
12 mitigation evidence? 12:21

13 A I don't have an independent recollection 12:21
14 of that person as I sit here today. 12:21

15 Q Okay. During your representation of 12:21
16 Mr. Maples, did you talk to Clint Curtis related to 12:21
17 mitigation evidence? 12:22

18 A I don't have an independent recollection 12:22
19 of that person as I sit here today. 12:22

20 Q During your representation of Mr. Maples, 12:22
21 did you talk to Shane Curtis -- Shane Curtis to 12:22
22 develop potential mitigation evidence? 12:22

23 A I don't have an independent recollection 12:22
24 of a person by that name as I sit here today. 12:22

25 Q Okay. During your representation of 12:22

1 P. MITCHELL

2 Mr. Maples, did you talk to Debby Higgins related to 12:22
3 mitigation evidence? 12:22

4 A I recall that name, but I don't have an 12:22
5 independent recollection as to whether or not I spoke 12:22
6 with her personally while representing Mr. Maples. 12:22

7 Q Okay. During your representation of 12:22
8 Mr. Maples, do you recall speaking to Shannon Smith, 12:22
9 or she may have also gone by Shannon Farrell, 12:22
10 regarding mitigation evidence? 12:23

11 A I don't have an independent recollection 12:23
12 as I sit here today of that name. 12:23

13 Q During your representation of Mr. Maples, 12:23
14 did you talk to Gay Lenhart regarding potential 12:23
15 mitigation evidence? 12:23

16 A I don't have an independent recollection 12:23
17 as I sit here today regarding that name. 12:23

18 Q Okay. During your representation of 12:23
19 Mr. Maples, did you talk to Glen Lang regarding the 12:23
20 mitigation? 12:23

21 MS. HUGHES: Excuse me. Who? 12:23

22 BY MS. SOULE: 12:23

23 Q Glen Lang. 12:23

24 A Spell that last name, please. 12:23

25 Q L-A-N-G. 12:23

1 P. MITCHELL

2 A The name sounds somewhat familiar, but I 12:23
3 don't have an independent recollection that I spoke 12:23
4 with that person as I sit here today. 12:23

5 Q Okay. During your representation of 12:23
6 Mr. Maples, did you talk to Billy Hopkins related to 12:23
7 mitigation evidence? 12:23

8 A I don't have a recollection of talking 12:24
9 with Mr. Hopkins as I sit here today. 12:24

10 Q During your representation of Mr. Maples, 12:24
11 did you talk to Billy Rhodes, R-H-O-D-E-S, regarding 12:24
12 mitigation evidence? 12:24

13 A I don't have an independent recollection 12:24
14 of speaking with him as I sit here today. 12:24

15 Q Okay. During your representation of 12:24
16 Mr. Maples, did you talk to Judy Simms to develop 12:24
17 mitigation evidence? 12:24

18 A The name sounds familiar but, again, I do 12:24
19 not have an independent recollection if I spoke with 12:24
20 her personally regarding mitigation. 12:24

21 Q Okay. During your representation of 12:24
22 Mr. Maples, did you talk to Rod Frost related to 12:24
23 mitigation evidence? 12:24

24 A Spell that last name. 12:24

25 Q Frost, F-R-O-S-T. 12:25

1 P. MITCHELL

2 A I don't have an independent recollection 12:25
3 of that name. 12:25

4 Q Okay. During your representation of 12:25
5 Mr. Maples, did you talk to Kenneth Hall related to 12:25
6 mitigation evidence? 12:25

7 A That name sounds familiar, but I don't 12:25
8 have an independent recollection if I personally 12:25
9 spoke with Mr. Hall regarding mitigation. 12:25

10 Q Okay. During your representation of 12:25
11 Mr. Maples, did you talk to Rhonda Hembree, 12:25
12 H-E-M-B-R-E-E, regarding mitigation evidence? 12:25

13 A Again, that name sounds familiar, but I 12:25
14 don't have an independent recollection as I sit here 12:25
15 today if I spoke with her regarding mitigation. 12:25

16 Q During your representation of Mr. Maples, 12:25
17 did you talk to Margie Moore related to mitigation 12:25
18 evidence? 12:26

19 A As I sit here today, I don't have an 12:26
20 independent recollection of that name. 12:26

21 Q Okay. During your representation of 12:26
22 Mr. Maples, did you talk to Larry Green related to 12:26
23 mitigation evidence? 12:26

24 A Again, that name sounds familiar, but I 12:26
25 don't have an independent recollection as I sit here 12:26

1 P. MITCHELL

2 today of whether I personally spoke with Mr. Green 12:26
3 regarding mitigation. 12:26

4 Q During your representation of Mr. Maples, 12:26
5 did you speak with Sam Frost related to evidence for 12:26
6 mitigation? 12:26

7 A I don't have an independent recollection 12:26
8 of that name as we sit here today. 12:26

9 Q Okay. As you sit here today, do you have 12:26
10 any specific recollection of any of the conversations 12:26
11 you had with witnesses relating specifically to 12:26
12 mitigation? 12:27

13 A Not in specific detail. I have 12:27
14 recollections of the general topics that were 12:27
15 discussed in connection with the mitigation phase of 12:27
16 the case. 12:27

17 Q Can you name the witnesses that you have 12:27
18 those recollections for? And here, again, I'm only 12:27
19 talking about evidence related to mitigation. 12:27

20 A My answer to that would be I have a 12:27
21 recollection, but not specific, regarding the 12:27
22 witnesses that were presented for testimony in the 12:27
23 mitigation phase of the case. 12:27

24 Q Okay. Anyone beyond those witnesses? 12:27

25 A Not that I recall independently as I sit 12:27

1 P. MITCHELL

2 here today, I cannot remember specifics regarding. 12:27

3 MS. SOULE: All right. I think we 12:28

4 will -- we'll take a real quick break. 12:28

5 (Brief pause.) 12:28

6 MS. HUGHES: Ready? 12:30

7 MS. SOULE: Uh-huh. 12:30

8 EXAMINATION 12:30

9 BY MS. HUGHES: 12:30

10 Q Mr. Mitchell, my name is Beth Hughes. I 12:30

11 work in the Attorney General's office. 12:30

12 I believe you've met with Rich Anderson 12:30

13 from our office; is that correct? 12:30

14 A Yes, ma'am. 12:30

15 Q And you also talked to him on the phone? 12:30

16 A Yes, ma'am. 12:30

17 Q You agree that Judge Craig was the lead 12:30

18 counsel in this case; is that correct? 12:30

19 A Yes, ma'am. 12:30

20 Q And you also remember that you hired an 12:30

21 investigator in this case; is that correct? 12:30

22 A Yes, ma'am. 12:30

23 Q And that the investigator investigated 12:30

24 possible mitigation evidence to present in the 12:30

25 penalty phase of the trial? 12:30

1 P. MITCHELL

2 MS. SOULE: Objection. I don't 12:30

3 believe that's been established. 12:30

4 BY MS. HUGHES: 12:30

5 Q You can answer. 12:30

6 A I would say that our investigator was 12:30

7 hired to investigate all aspects of the case that we 12:31

8 needed, including mitigation, if those facts came up 12:31

9 through his investigation. 12:31

10 Q You also remember that you hired 12:31

11 Dr. Sheely to -- to evaluate Mr. Maples; is that 12:31

12 correct? 12:31

13 A Yes, ma'am. 12:31

14 Q And you have no reason to dispute that 12:31

15 Judge Craig had used the same investigator in prior 12:31

16 cases, do you? 12:31

17 A I don't recall that, but I don't have any 12:31

18 reason to dispute that. 12:31

19 Q Isn't it true that while you -- while 12:31

20 Judge Craig was the lead investigator -- was the lead 12:31

21 counsel in this case, you shared responsibilities and 12:31

22 worked closely with him? 12:31

23 A Yes, ma'am. 12:31

24 Q And you would not dispute that you and 12:31

25 Judge Craig would discuss which witnesses you wanted 12:31

1 P. MITCHELL

2 to call during the penalty phase of the trial; is 12:31
3 that correct? 12:31

4 A Yes, ma'am, there were discussions 12:31
5 regarding that. 12:31

6 Q You would not have put someone on the 12:31
7 stand during the penalty phase without preparing 12:31
8 them, would you? 12:31

9 A As a team, no, ma'am. 12:31

10 Q You would have talked to these witnesses 12:32
11 and had an idea of what their testimony would be 12:32
12 before you put them on the stand; is that correct? 12:32

13 MS. SOULE: Objection. Can you be 12:32
14 clear of whether or not you're talking 12:32
15 about him individually or them as a team? 12:32

16 MS. HUGHES: I said you. 12:32

17 BY MS. HUGHES: 12:32

18 Q You would never have, personally, not 12:32
19 talked to witnesses and then put them on the stand 12:32
20 without knowing what their testimony would be in the 12:32
21 penalty phase of a capital trial, would you? 12:32

22 A If I was personally going to examine that 12:32
23 witness, certainly, I would. If not personally, I 12:32
24 would be involved in the preparation to the extent 12:32
25 that my lead counsel required me to. 12:32

1 P. MITCHELL

2 Q And you have testified today that your 12:32
3 memories of what happened in this case are not clear 12:32
4 22 years later; is that correct? 12:32

5 A Well, it's very difficult to remember 12:32
6 specific details of a case that's 22 years in the 12:32
7 past. 12:32

8 Q If Judge Craig has clear memories of what 12:32
9 strategies were or what -- why you called certain 12:33
10 witnesses, you would not dispute his memories, would 12:33
11 you? 12:33

12 A I would have no reason to. 12:33

13 MS. SOULE: Objection. 12:33

14 BY MS. HUGHES: 12:33

15 Q Would your file in this case have the 12:33
16 same content as Judge Craig's file? 12:33

17 MS. SOULE: Objection. 12:33

18 BY MS. HUGHES: 12:33

19 Q Would you have witness statements and 12:33
20 transcripts of conversations with witnesses that 12:33
21 would be in your file? 12:33

22 A There would be. 12:33

23 MS. SOULE: Objection. 12:33

24 THE WITNESS: There would be. 12:33

25

1 P. MITCHELL

2 BY MS. HUGHES:

3 Q And you testified today that your fee 12:33
4 declaration was fairly accurate; is that correct? 12:33

5 MS. SOULE: Objection. That 12:33
6 mischaracterizes his testimony. 12:33

7 THE WITNESS: Yes, ma'am, I would 12:33
8 testify that the fee declaration is 12:33
9 accurate to the extent that the \$1,000 12:33
10 cap that we discussed, the hours that I 12:33
11 put on the fee multiplied by the \$20 per 12:33
12 hour would exceed the \$1,000 cap. 12:33

13 BY MS. HUGHES:

14 Q Would you agree that you did not record 12:34
15 every single detail concerning this case on your fee 12:34
16 declaration? 12:34

17 A No, I would not, because there may be -- 12:34
18 knowing that that's a capital case, I would not put 12:34
19 in anything that I felt was privileged related to go 12:34
20 up to someone outside the case to review. So it was 12:34
21 more of a generalized fee declaration. 12:34

22 Q Did the cap on the out-of-court 12:34
23 preparation time affect your representation of 12:34
24 Mr. Maples? 12:34

25 A No, ma'am. 12:34

1 P. MITCHELL

2 Q While you do not have specific memories 12:34
3 of your preparation for the penalty phase, you would 12:34
4 not have gotten to the penalty phase without 12:34
5 preparing; is that correct? 12:34

6 A No, ma'am, we would not have. 12:34

7 Q You'll agree that you called four 12:34
8 witnesses to testify at the penalty phase of the 12:34
9 trial; is that correct? 12:34

10 A That's my recollection. 12:34

11 Q And that you recognize the importance of 12:35
12 preparing for the penalty phase of the trial; is that 12:35
13 correct? 12:35

14 A Yes, ma'am. 12:35

15 Q And that you, in fact, prepared for the 12:35
16 penalty phase of this case; is that correct? 12:35

17 A Yes, ma'am. 12:35

18 Q You did review the videotape of the -- of 12:35
19 the Defendant's confession before the trial, is that 12:35
20 correct? 12:35

21 MS. SOULE: Objection. 12:35

22 THE WITNESS: Yes, ma'am. 12:35

23 BY MS. HUGHES: 12:35

24 Q You testified that you issued subpoenas 12:35
25 for records from your office; is that correct? 12:35

1 P. MITCHELL

2 A Yes, ma'am. 12:35

3 Q Do you recall all of the subpoenas that 12:35

4 you issued? 12:35

5 A I don't recall all. There was a 12:35

6 substantial number. 12:35

7 Q Can you give me some examples of what -- 12:35

8 MS. SOULE: Objection. I think -- 12:36

9 BY MS. HUGHES: 12:36

10 Q -- of the witnesses that you subpoenaed 12:36

11 for the penalty phase of the trial? 12:36

12 MS. SOULE: Thank you. 12:36

13 THE WITNESS: Again, the records -- 12:36

14 the medical records from Decatur General 12:36

15 Hospital, Decatur General West, the North 12:36

16 Alabama Mental Health Center, Quest 12:36

17 Recovery, jail records, police department 12:36

18 records. Those are some of the subpoenas 12:36

19 that I recall being issued by my office 12:36

20 in connection with the matter. 12:36

21 BY MS. HUGHES: 12:36

22 Q Would Judge Craig's office also have 12:36

23 issued those subpoenas? 12:36

24 A He may have. 12:36

25 MS. SOULE: Objection. To the 12:36

1 P. MITCHELL

2 extent it's beyond -- 12:36

3 BY MS. HUGHES: 12:36

4 Q Was the investigator that was hired able 12:36
5 to obtain useful information for the penalty phase of 12:36
6 the trial? 12:36

7 A I believe so. 12:36

8 Q You've reviewed the letter that was from 12:37
9 the Alabama Prison Project. I think it was Exhibit 12:37
10 3. 12:37

11 In that letter, they indicate that you 12:37
12 had to obtain funds from the Court to -- to hire 12:37
13 them; is that -- do you see that in the record? 12:37

14 MS. SOULE: Objection. I believe 12:37
15 that mischaracterizes the letter. 12:37

16 THE WITNESS: There's a paragraph 12:37
17 in the letter that says: Although the 12:37
18 Mitigation Investigation Program receives 12:37
19 Law Foundation support, we rely heavily 12:37
20 upon court-ordered expert fees. 12:37

21 BY MS. HUGHES: 12:37

22 Q Okay. Thank you. 12:37

23 And you would have met with witnesses to 12:37
24 prepare for the penalty phase of the trial; is that 12:37
25 correct? 12:37

1 P. MITCHELL

2 A In connection with lead counsel, yes, 12:37
3 ma'am. 12:37

4 Q And just because you don't have an 12:37
5 independent recollection of talking to people doesn't 12:37
6 mean that you didn't talk to them; is that correct? 12:37

7 MS. SOULE: Objection. 12:38

8 THE WITNESS: No ma'am, that does 12:38
9 not mean that. 12:38

10 BY MS. HUGHES: 12:38

11 Q Okay. What does it mean? 12:38

12 A Pardon? 12:38

13 Q What does it mean? 12:38

14 MS. SOULE: Objection. 12:38

15 THE WITNESS: It means that I do 12:38
16 not have a specific recollection of the 12:38
17 details, but I do have a recollection 12:38
18 that the witnesses were spoken with and 12:38
19 it is my recollection that I was in the 12:38
20 presence of some or all of those 12:38
21 witnesses in connection with the 12:38
22 preparation for the mitigation. 12:38

23 BY MS. HUGHES: 12:38

24 Q If you don't remember -- if you don't 12:38
25 have a specific recollection of talking to cousins or 12:38

1 P. MITCHELL

2 to the Defendant's mother's family, that doesn't mean 12:38
3 that you didn't talk to them; is that correct? 12:38

4 MS. SOULE: Objection. 12:38

5 THE WITNESS: I just don't have an 12:38
6 independent recollection of that. I -- I 12:38
7 may or may not have. I don't know, as we 12:38
8 sit here 22 years later, how I can 12:38
9 refresh that. 12:38

10 BY MS. HUGHES: 12:38

11 Q Have you reviewed your file? 12:38

12 MS. SOULE: Objection. 12:38

13 THE WITNESS: I have reviewed 12:38
14 aspects of my file. 12:38

15 BY MS. HUGHES: 12:39

16 Q Is it possible that you or Judge Craig 12:39
17 obtained the educational records, but you just don't 12:39
18 today recall obtaining those records? 12:39

19 A My recollection is that I don't believe I 12:39
20 obtained those records. I don't know whether Judge 12:39
21 Craig did or not, but it's possible. 12:39

22 Q It's possible that Judge Craig did? 12:39

23 A Yes, ma'am. 12:39

24 Q Can you look, again, at Exhibit 6, 12:39
25 please, specifically page 206. 12:39

1 P. MITCHELL

2 MS. SOULE: One second while I pull 12:39

3 that up. 12:39

4 THE WITNESS: Yes, ma'am. 12:39

5 BY MS. HUGHES: 12:39

6 Q I believe you reviewed the Chief 12:39

7 Complaint there; is that correct? 12:39

8 A Yes, ma'am. 12:39

9 Q Do you see anything on that chief 12:40

10 complaint about a -- that the Defendant had a 12:40

11 concussion? 12:40

12 A I'm not able to read all of the 12:40

13 examination notes, but from the Chief Complaint, no, 12:40

14 I don't see the word concussion in there. 12:40

15 Q Okay. You don't recall talking to 12:40

16 someone from Quest, but is it possible that you 12:40

17 did -- you don't have an independent recollection of 12:40

18 that, but is it possible you, in fact, did talk to 12:41

19 someone from the Quest Recovery Center? 12:41

20 MS. SOULE: Objection. 12:41

21 THE WITNESS: I don't have an 12:41

22 independent recollection but that is 12:41

23 possible. 12:41

24 BY MS. HUGHES: 12:41

25 Q Because you don't recall Kathy Goodwin 12:41

1 P. MITCHELL

2 today, that doesn't mean you didn't speak to her; is 12:41
3 that correct? 12:41

4 MS. SOULE: Objection. 12:41

5 THE WITNESS: That's possible that 12:41
6 I spoke with her but I just don't have an 12:41
7 independent recollection today. 12:41

8 BY MS. HUGHES: 12:41

9 Q Did you turn over your file to 12:41
10 Mr. Maples' present counsel in this case? 12:41

11 MS. SOULE: Objection. 12:41

12 THE WITNESS: No, ma'am, I have 12:41
13 not. 12:41

14 BY MS. HUGHES: 12:41

15 Q Is it your belief that someone, during 12:41
16 the representation, talked to people at Decatur 12:41
17 Police Department before Mr. Maples' trial -- 12:41

18 MS. SOULE: Objection. 12:41

19 BY MS. HUGHES: 12:41

20 Q -- the penalty phase of Mr. Maples' 12:41
21 trial? 12:41

22 MS. SOULE: I would like -- your 12:41
23 question wasn't specific to the penalty 12:41
24 phase. 12:41

25 MS. HUGHES: And I added that. 12:41

1 P. MITCHELL

2 MS. SOULE: Okay. Sorry. 12:41

3 MS. DAWSON: Just to clarify, you 12:42

4 added whether they spoke to them prior to 12:42

5 the penalty phase. It wasn't clear the 12:42

6 content of the conversations with the 12:42

7 police department. 12:42

8 MS. SOULE: So I would ask you to 12:42

9 limit the question to just the penalty 12:42

10 phase. 12:42

11 MS. HUGHES: Okay. 12:42

12 MS. SOULE: In relation to the 12:42

13 penitentiary phase. 12:42

14 THE WITNESS: Would you repeat the 12:42

15 question so I make sure that I'm 12:42

16 answering it correctly. 12:42

17 BY MS. HUGHES: 12:42

18 Q Okay. So do you believe that someone 12:42

19 talked -- someone who was involved in the 12:42

20 representation of Mr. Maples, talked to people at the 12:42

21 Decatur Police Department before the penalty phase of 12:42

22 Mr. Maples' trial? 12:42

23 A Yes, ma'am. 12:42

24 MS. SOULE: Objection. You still 12:42

25 didn't limit it to evidence in relation 12:42

1 P. MITCHELL

2 to the penalty phase. 12:42

3 BY MS. HUGHES: 12:42

4 Q Did someone from your office talk to 12:42

5 people at the Decatur Police Department about 12:42

6 evidence that could possibly be used as mitigation 12:42

7 before the penalty phase of the trial? 12:42

8 A I believe so. 12:42

9 Q And you believe that an investigation was 12:42

10 conducted into Mr. Maples' mental health that 12:42

11 pertained to the mitigation phase of his trial; is 12:42

12 that correct? 12:43

13 A Yes, ma'am. 12:43

14 MS. SOULE: Objection. 12:43

15 BY MS. HUGHES: 12:43

16 Q You don't personally recall, but would 12:43

17 someone have talked to Mr. Maples' father and 12:43

18 stepmother to know that they would testify before the 12:43

19 penalty phase of the trial? 12:43

20 MS. SOULE: Objection. 12:43

21 THE WITNESS: Yes, ma'am, I believe 12:43

22 so. 12:43

23 BY MS. HUGHES: 12:43

24 Q Would someone have prepared them to 12:43

25 testify for the penalty phase of the trial? 12:43

1 P. MITCHELL

2 MS. SOULE: Objection. 12:43

3 THE WITNESS: Yes, ma'am, I believe 12:43

4 so. 12:43

5 BY MS. HUGHES: 12:43

6 Q And although you don't recall 12:43

7 specifically talking to Kenneth Maples, who is the 12:43

8 Defendant's uncle, would someone have prepared him to 12:43

9 testify for the penalty phase of the trial? 12:43

10 MS. SOULE: Objection. 12:43

11 THE WITNESS: Yes, ma'am, I believe 12:43

12 so. 12:43

13 BY MS. HUGHES: 12:43

14 Q You were very specific when you answered 12:43

15 about certain people that you talked to or didn't 12:43

16 talk who could have -- possible mitigation witnesses. 12:43

17 And I think your response was that you -- 12:43

18 that you're familiar with names, but you don't know 12:44

19 whether you personally spoke to them. For example, 12:44

20 Debby Higgins, Kenneth Hall, Rhonda Hembree and Larry 12:44

21 Green. 12:44

22 That doesn't mean that Judge Craig or the 12:44

23 investigator didn't speak to those witnesses; is that 12:44

24 correct? 12:44

25 MS. SOULE: Objection. 12:44

1	P. MITCHELL	
2	THE WITNESS: That is correct.	12:44
3	MS. HUGHES: That's all I have.	12:44
4	MS. SOULE: Can we just have a	12:44
5	break?	12:44
6	(Brief pause.)	12:44
7	EXAMINATION	01:04
8	BY MS. SOULE:	01:10
9	Q Mr. Mitchell, you mentioned during	01:10
10	Ms. Hughes' questions that you believe Mr. Nesmith	01:10
11	assisted with the mitigation phase. What do you	01:11
12	recall he assisted with?	01:11
13	A Again, that -- I think that that answer	01:11
14	might get into a broader discussion --	01:11
15	Q What do you recall specifically in	01:11
16	relation to mitigation that he assisted with?	01:11
17	A Again, I'm very concerned that that may	01:11
18	open up a discussion regarding confidential	01:11
19	information that is beyond the penalty phase. If you	01:11
20	want to waive that, I'd be glad to answer.	01:11
21	Q Do you recall any specific witnesses that	01:12
22	Mr. Nesmith spoke to in relation to mitigation?	01:12
23	A Let me answer that generally, again, as I	01:12
24	provided you in my original testimony.	01:12
25	Q I'd like you to answer my specific	01:12

1 P. MITCHELL

2 question. I don't -- I don't want your -- I would 01:12

3 like you -- 01:12

4 A Then I don't know that I can answer that 01:12

5 without -- I feel like that will make it into a 01:12

6 waiver of his confidentiality. I don't want to open 01:12

7 that door. 01:12

8 Q I'm not asking for any of the substance 01:12

9 of those conversations. I just want to know the 01:12

10 names of any witnesses he spoke to, specifically in 01:12

11 relation to evidence for mitigation. 01:12

12 A Any witness that he spoke with that he 01:13

13 gathered information from that would have been 01:13

14 reviewed and possibly used for mitigation. I can't 01:13

15 give you any specific name as I sit here today, but 01:13

16 any witness that he spoke with may have been used for 01:13

17 that purpose. 01:13

18 Q And were you with him for those 01:13

19 interviews? 01:13

20 A I have a recollection, but not a specific 01:13

21 recollection, that I was with him for some 01:13

22 interviews. 01:13

23 Q So you can't say that you know for sure 01:13

24 that he talked to every witness that he spoke to 01:13

25 about evidence for mitigation? 01:13

1 P. MITCHELL

2 A Would you please repeat that. 01:13

3 Q If you weren't with him when he spoke to 01:13

4 them, can you say for certain that you know that he 01:13

5 spoke to every single witness that he met with about 01:13

6 evidence for mitigation? 01:14

7 A I would know for certain that if any 01:14

8 evidence produced from his interviews related to 01:14

9 mitigation, that would be considered of use for 01:14

10 mitigation purposes. 01:14

11 Q That was not my question. 01:14

12 MS. SOULE: Can we -- if it -- can 01:14

13 you read my question back. 01:14

14 (The last question was read back 01:14

15 into the record.) 01:14

16 THE WITNESS: If I was not with 01:14

17 him, I would not know what specifically 01:14

18 he spoke to any witness that he 01:14

19 investigated, other than the work product 01:14

20 that he produced for us. 01:14

21 BY MS. SOULE: 01:14

22 Q Okay. What evidence related to 01:14

23 mitigation do you believe that Mr. Nesmith obtained? 01:15

24 A Again, unless you want to waive his 01:15

25 confidentiality provisions, I do not feel comfortable 01:15

1 P. MITCHELL

2 getting into a discussion of that. 01:15

3 Q How often did you speak with Mr. Nesmith? 01:15

4 A On many occasions through the course of 01:15
5 the representation. I would need -- probably defer 01:15
6 back to my fee petition for specifics. 01:15

7 Q Do you have that? I believe it was 01:15
8 Exhibit 2. 01:15

9 A Yes, ma'am. 01:15

10 Q You said you needed to refer to it to 01:16
11 answer my question? 01:16

12 A And your question again was? 01:16

13 Q How often did you speak with Mr. Nesmith? 01:16

14 A From reviewing my fee petition, I spoke 01:16
15 with him on 5/29 of '96. I met with him on 1/12 of 01:16
16 '97. Traveled to Tuscaloosa with him on 1/22 of '97. 01:16
17 I spoke with him on 2/11 of '97. I spoke with him on 01:17
18 2/12 of '97. I met with him on 2/25 of '97. I met 01:17
19 with him on August the 5th of 1997. I met with him 01:18
20 on August the 7th of 1997. I met with him on August 01:18
21 the 16th of 1997 -- excuse me -- October the 16th of 01:19
22 1997. 01:19

23 It is my recollection that Mr. Nesmith 01:19
24 was with us during the trial of the case or was 01:19
25 present at the courthouse. My records reflect that I 01:19

1 P. MITCHELL

2 met with him again on August the 23rd of 1997. 01:19

3 Q Did you say August 23rd? 01:20

4 A Excuse me. October the 23rd, 1997. 01:20

5 Those are the record -- the entries I 01:20

6 have in my fee petition where I met or spoke with our 01:20

7 investigator. There may be other times, but 01:20

8 that's -- the best of my recollection as we sit here 01:20

9 today is going to be my fee petition. 01:20

10 Q Do you have any specific recollection of 01:20

11 meeting with any witnesses with Mr. Nesmith to 01:20

12 develop mitigation evidence, in particular? Please 01:20

13 answer yes or no. 01:20

14 A Repeat the question again. 01:20

15 Q Do you have any specific recollection of 01:20

16 meeting with any witnesses with Mr. Nesmith to 01:20

17 develop mitigation evidence, in particular; yes or 01:20

18 no? 01:20

19 A Yes, I believe some of the entries in my 01:20

20 fee petition show that. 01:21

21 Q Do you have a specific recollection of 01:21

22 those as you sit here today? 01:21

23 A As refreshed by my fee petition, yes, I 01:21

24 do. 01:21

25 Q Okay. Who do you recall meeting with in 01:21

1 P. MITCHELL

2 relation to developing mitigation evidence? 01:21

3 A I would defer to my fee petition where it 01:21

4 says that I met with Mr. Nesmith and witnesses in 01:21

5 connection with the case. 01:21

6 Q I'm asking for your recollection as you 01:21

7 sit here today. 01:21

8 A As to specifics of what was discussed? 01:21

9 Q I'm asking for your recollection as you 01:21

10 sit here today of which witnesses you recall meeting 01:21

11 with, with Mr. Nesmith, in relationship to developing 01:21

12 evidence for mitigation. 01:21

13 A That would be in my file. I do not have 01:21

14 a specific recollection of that without going through 01:21

15 the fee petition. 01:21

16 Q Do you know if Mr. Nesmith had any 01:21

17 experience doing work related to the development of 01:21

18 mitigation evidence in capital cases? 01:22

19 A I don't have an independent recollection 01:22

20 of that, as we sit here today. 01:22

21 Q Ms. Hughes also asked you about the 01:22

22 preparation for witnesses at trial. 01:22

23 Did you examine any of the witnesses 01:22

24 during the penalty phase of the trial? 01:22

25 A I don't recall doing so. I believe Judge 01:22

1 P. MITCHELL

2 Craig examined all four of the witnesses in the 01:22
3 penalty phase. 01:22

4 Q Okay. Do you have any specific 01:22
5 recollection of being the person responsible for 01:22
6 preparing any of the witnesses to testify during the 01:22
7 penalty phase? 01:22

8 A Not individually. 01:22

9 Q Do you have any specific recollection 01:22
10 about how Mark Craig directed you to be involved in 01:22
11 the penalty phase? 01:22

12 A Yes. 01:22

13 Q What is that recollection? 01:22

14 A My recollection is that, when we met as a 01:22
15 team, we were developing mitigation testimony, 01:22
16 mitigation evidence for the penalty phase throughout 01:23
17 the course of the investigation of the case in the 01:23
18 representation of Mr. Maples. 01:23

19 And my investigation is that, before the 01:23
20 penalty phase we finalized into a list of specific 01:23
21 topics that we wanted to have brought out in the 01:23
22 mitigation phase of the penalty phase of the case, 01:23
23 and that we discussed the aspects of how we were 01:23
24 going to do that through the witnesses that 01:23
25 testified. 01:23

1 P. MITCHELL

2 That's my recollection of the -- in 01:23
3 answer to the question you've asked me. 01:23

4 Q Ms. Hughes also asked you about whether 01:23
5 someone could have spoken to someone at the Quest 01:23
6 Recovery Center. 01:23

7 Do you have any recollection of anyone 01:23
8 speaking to someone at the Quest Recovery Center 01:23
9 beyond asking for their records? 01:23

10 A I don't have an independent recollection 01:23
11 of that. 01:24

12 Q In response to Ms. Hughes' questions, I 01:24
13 believe you said that someone spoke to the Police 01:24
14 Department in relation to evidence for mitigation. 01:24

15 Who spoke to the Police Department in 01:24
16 relation to evidence for mitigation? 01:24

17 A That would have been me or Johnny Nesmith 01:24
18 or Judge Craig. I don't have an independent 01:24
19 recollection of who, as we sit here today. 01:24

20 Q What were the conversations -- were those 01:24
21 conversations limited to requesting records related 01:24
22 to mitigation? 01:24

23 A I do not believe so. 01:24

24 Q Can you name anyone at the Police 01:24
25 Department that you know was spoken to in relation to 01:25

1 P. MITCHELL

2 mitigation? 01:25

3 A It would be reflected on the records that 01:25
4 were produced by the Decatur Police Department, but 01:25
5 as I sit here today I -- I have an estimation, a 01:25
6 guess, but I'm not going to speculate. 01:25

7 Q If you don't have an independent 01:25
8 recollection -- 01:25

9 A I do not have an independent 01:25
10 recollection. I would have to rely upon the records 01:25
11 that were produced by the Police Department. 01:25

12 Q Is there anything in your fee petition 01:25
13 that indicates that you spoke to anyone at the Police 01:25
14 Department? 01:25

15 A I'd have to look. 01:25

16 Q Related to mitigation? 01:25

17 A There is a 5/20/1997 entry that says, 01:27
18 Examined records at Decatur Police Department records 01:27
19 room in response to subpoena, which would indicate to 01:27
20 me that I had to speak with someone at the Decatur 01:27
21 Police Department when that examination was 01:27
22 performed. 01:27

23 Q Does anything in that entry indicate that 01:27
24 you would have spoken to them beyond related to 01:27
25 requesting those records? 01:27

1 P. MITCHELL

2 A The entry indicates that I examined the 01:27
3 records at the Decatur Police Department's record 01:27
4 room, in response to that subpoena. 01:27

5 Q But I don't believe that's -- 01:27

6 A That indicates to me that I had spoke 01:27
7 with someone beyond the request for those records, 01:27
8 yes, to answer your question. 01:27

9 Q Do you have any specific recollection of 01:28
10 what that conversation was in relation to evidence 01:28
11 for mitigation? Or actually, let me back up. 01:28

12 Do you have any specific recollection 01:28
13 that you spoke to anyone -- that when you spoke to 01:28
14 someone at the Police Department, you spoke to them 01:28
15 about evidence for mitigation, beyond what was in the 01:28
16 records? 01:28

17 A In response to mitigation, I generally 01:28
18 have a recollection of that. I do not have a 01:28
19 specific recollection. 01:28

20 Q What is your general recollection? 01:28

21 A The general recollection was that it was 01:28
22 discussed regarding the assistance that he had 01:28
23 provided in the Decatur Police Department in trying 01:28
24 to arrest others for drug crimes. 01:29

25 Q Do you specifically remember talking to 01:29

1 P. MITCHELL

2 someone about that? 01:29

3 A I don't have a specific recollection as 01:29

4 we sit here today regarding that. That is only a 01:29

5 general recollection. 01:29

6 Q Do you know who you spoke to about it? 01:29

7 A I do not have a specific recollection 01:29

8 beyond what would be shown on the records. 01:29

9 Q You said in response to Ms. Hughes' 01:30

10 questions that you believe someone spoke to the 01:30

11 Morgan County Jail in relation to getting evidence 01:30

12 for mitigation? 01:30

13 A I do believe so. 01:30

14 Q Who do you recall spoke to the jail? 01:30

15 A My recollection would be that that would 01:30

16 be Judge Mark Craig. 01:30

17 MS. SOULE: All right. That's -- 01:30

18 we're finished for today. Thank you very 01:30

19 much. 01:30

20 MS. HUGHES: I just have one 01:30

21 question. 01:30

22 MS. SOULE: I don't believe that 01:30

23 you get any -- 01:30

24 MS. HUGHES: You can lodge an 01:30

25 objection. 01:30

1	P. MITCHELL	
2	MS. SOULE: We'll object and then	01:30
3	go ahead and ask your question.	01:30
4	EXAMINATION	01:30
5	BY MS. HUGHES:	01:30
6	Q I just wanted to make sure I understood	01:30
7	correctly that there were times that you met with	01:30
8	Mr. Nesmith that would not be reflected in -- on your	01:30
9	fee declaration sheet; is that correct?	01:30
10	MS. SOULE: Objection.	01:30
11	THE WITNESS: There could be. I	01:30
12	just don't have an independent	01:31
13	recollection of that.	01:31
14	MS. HUGHES: That's it.	01:31
15		01:31
16	EXAMINATION	01:31
17	BY MS. SOULE:	01:31
18	Q Would your record at the time of what you	01:31
19	did be the best approximation of who you spoke to and	01:31
20	when, in your fee petition?	01:31
21	A Unless there was some other document in	01:31
22	my file.	01:31
23	MS. SOULE: All right. Thank you	01:31
24	very much.	01:31
25	THE WITNESS: Thank you.	01:31

1 P. MITCHELL

2
3 (Thereupon, the deposition was
4 concluded at approximately 12:31 p.m.)
5
6
7

8 _____
9 PHIL D. MITCHELL
10

11 Subscribed and sworn to before me
12 this _____ day of _____, 2019.
13 _____
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D I S C L O S U R E

STATE OF ALABAMA) DEPOSITION OF:

JEFFERSON COUNTY) PHIL D. MITCHELL

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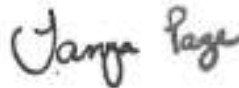
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DATED: 9-5-2019



Tanya L. Verhoven-Page,
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B-1790.

C E R T I F I C A T E

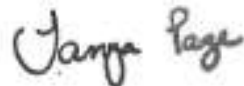
STATE OF ALABAMA:

JEFFERSON COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to written page under my direction, that the preceding pages represent a true and correct transcript of the evidence given by said witness.

I further certify that I am not of kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in any way financially interested in the result of said case.

Dated this 5th day of September,
2019.



Tanya L. Verhoven-Page,
Certified Court Reporter,

Case Name: Maples v. Dunn
Dep. Date: September 5, 2019
Deponent: Phil D. Mitchell

CORRECTIONS

Pg.	Ln.	Now Reads	Should Read	Reason
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Pg.	Ln.	Now Reads	Should Read	Reason
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Pg.	Ln.	Now Reads	Should Read	Reason
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Signature of Deponent

SUBSCRIBED AND SWORN BEFORE ME

This the day of , 2019.

(Notary Public) My Commission Expires: